

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY TOTTEN, JOSE MORENO, in their)	No. C-05-4307-SC
capacities as Trustees of the)	
LABORERS HEALTH AND WELFARE TRUST)	
FUND FOR NORTHERN CALIFORNIA;)	
LABORERS VACATION-HOLIDAY TRUST)	ORDER GRANTING
FUND FOR NORTHERN CALIFORNIA;)	PLAINTIFFS' MOTION
LABORERS PENSION TRUST FUND FOR)	<u>FOR SUMMARY JUDGMENT</u>
NORTHERN CALIFORNIA; and LABORERS)	
TRAINING AND RETRAINING TRUST FUND)	
FOR NORTHERN CALIFORNIA,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ALEX PEGUES, individually; ROGER)	
PITCHER, individually; ALEX PEGUES)	
and ROGER PITCHER, individually and)	
dba C&C MAINTENANCE SERVICE and C&C)	
MAINTENANCE SERVICE,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiffs Larry Totten et al. ("Plaintiffs") filed this action against Defendants Alex Pegues, both individually and dba C&C Maintenance Service ("Defendants")¹, alleging causes of action for violations of the Employee Retirement Security Act, 29 U.S.C. § 1001 et seq. ("ERISA").

Presently before the Court is Plaintiffs' Motion for Summary

¹ Plaintiffs dismissed Roger Pitcher as a defendant. See Docket Nos. 15 and 16.

Judgment. Defendants have not filed an opposition, though they were served with a copy of the motion and given adequate time to respond. On three separate occasions, the Court granted Defendants' extended time to respond to Plaintiffs' motion. See Docket Nos. 37, 39, 44. The Court stated that the most recent extension order, dated November 3, 2006, was the last extension the Court would grant Defendants. See Docket No. 44. Despite this clear warning, Defendants failed to file any response.

For the reasons stated herein, the Court GRANTS Plaintiffs' Motion for Summary Judgment and AWARDS Plaintiffs damages of \$28,837.49. The Court also AWARDS Plaintiffs attorneys' fees and costs, subject to the Court's review and approval of Plaintiffs' offer of proof to be submitted within 30 days of this order.

II. BACKGROUND

Plaintiffs sued Defendants Alex Pegues and C&C Maintenance Service to recover delinquent contributions to several Laborers Trust Funds. See First Amended Complaint, Docket No. 4. Defendants agreed to the terms of the Collective Bargaining Agreement ("CBA") with the Northern California District Council of Laborers by signing the Letter of Understanding on March 19, 2004 and the Laborers' Master Agreement ("Master Agreement") on June 16, 2004. See Hagan Decl., Ex. A. The CBA incorporates the terms of the Master Agreement, id. at Ex. B, and the Laborers Trust Agreements, id. at Ex. C. See Hagan Decl. at ¶ 3. The Agreements require each individual employer, including Defendants, to make timely contributions at a specified rate for each hour worked by

1 each employee covered under the Agreements. See id. at Ex. B, §
2 28. The Agreements also require Defendants to report wage and
3 hour data to the Trust Funds and allow a Trust Fund Auditor to
4 review any relevant records upon request. See id. at Ex. B., § 7.
5 After an auditor finds a delinquent employer, 1.5% monthly
6 interest is added to delinquent contributions and liquidated
7 damages are assessed at \$150 per month. See id. at Ex. B, § 28.

8 On December 14, 2004, a Field Auditor reviewed Defendants'
9 records to determine their liability under the CBA. See Sorensen
10 Decl. ¶ 6. At that time, Defendants failed to produce some of the
11 required documents, but from the information available, the Field
12 Auditor was able to determine that Defendants owed at least
13 \$29,510. See id. at ¶¶ 7-10. Subsequently, a general contractor
14 paid \$7,832.90 owed by Defendants, reducing the amount owed. See
15 id. at ¶ 10. However, because Defendants refused to pay the
16 delinquent contributions, liquidated damages continued to accrue.
17 See id. At present, based on the audit, Defendants owe \$18,767.78
18 in contributions and \$10,069.71 in liquidated damages, a total of
19 \$28,837.49. Id.

20 21 **III. LEGAL STANDARD**

22 Summary judgment is appropriate only "if the pleadings,
23 depositions, answers to interrogatories, and admissions on file,
24 together with the affidavits, if any, show that there is no
25 genuine issue as to any material fact." Celotex Corp. v. Catrett,
26 477 U.S. 317, 322 (1986). A genuine issue of fact exists when the
27 non-moving party produces evidence on which a reasonable trier of
28

fact could find in its favor viewing the record as a whole in light of the evidentiary burden the law places on that party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252-56 (1986). Summary judgment is therefore appropriate against a party "who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322-23. The more implausible the claim or defense asserted by the opposing party, the more persuasive its evidence must be to avoid summary judgment, see Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), but "[t]he evidence of the non-moving party is to be believed, and all justifiable inferences are to be drawn in its favor." Anderson, 477 U.S. at 255.

IV. DISCUSSION

A. Defendants' Legal Liability

Defendants were bound by the CBA after signing the Agreements. On behalf of C&C Maintenance Service, Defendant Alex Pegues signed the Letter of Understanding on March 19, 2004 and the Laborers' Master Agreement on June 16, 2004. See Hagan Decl., Ex. A. The Master Agreement states that its provisions remain in effect until terminated and there is no evidence that Defendants terminated the Agreement. Thus, Defendants are still bound by the terms of the CBA.

Under ERISA, 29 U.S.C. § 1145:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the

1 extent not inconsistent with law, make such contributions in
2 accordance with the terms and conditions of such plan or such
agreement.

3 29 U.S.C. § 1145. As a signatory to the plan, Defendants have
4 violated ERISA by failing to make the proper contributions under
5 the Trust Agreements.

6 **B. Unpaid Contributions**

7 The clear terms of collective bargaining agreements are to be
8 strictly construed by federal courts. See Irwin v. Carpenters
9 Health and Welfare Trust Fund for California, 745 F.2d 553, 557
10 (9th Cir. 1984). Section 28A of the Master Agreement requires
11 Defendants to "pay hourly contributions for each hour paid for
12 and/or worked." Hagan Decl., Ex. B. Accordingly, Defendants owe
13 Plaintiffs the hourly contributions defined by the CBA.
14 Plaintiffs, having found that Defendants were not paying
15 contributions to the Trust Funds, requested an audit, which was
16 performed by the Field Auditor in December of 2004. See Sorensen
17 Decl. Though Defendants failed to provide all the requested
18 documentation, the Field Auditor was able to determine Defendants'
19 liability from a binder containing copies of payroll checks and
20 workers compensation insurance reports. See id. at ¶ 6. The
21 Field Auditor Determined that Defendants owed \$18,767.78 in
22 contributions. See id. at ¶ 10, Ex. C.

23 Plaintiffs' calculation of Defendants' delinquent
24 contributions is appropriate under Ninth Circuit law. Once the
25 Trust Funds prove damages and Defendants' failure to keep adequate
26 records, the burden shifts to Defendants to come forward with
27 evidence of the work its employees actually performed. See Brick

1 Masons Pension Trust v. Industrial Fence & Supply, Inc., 839 F.2d
2 1333, 1338-39 (9th Cir. 1988). If Defendants fail to produce the
3 appropriate documentation, Plaintiffs "are entitled as a matter of
4 law to recover contributions for all hours worked by these
5 [employees] during the [period] in which they were shown to have
6 performed some covered work for [Defendants]." Id. at 1339. The
7 documents used by the Field Auditor satisfy Plaintiffs' burden.
8 See Sorensen Decl. Defendants have failed to satisfy their burden
9 to show that Plaintiffs' calculations or documents are incorrect.
10 At one point, Defendant Alex Pegues claimed that the relevant
11 employees were not his, but this claim is undermined by the fact
12 that they are listed in his payroll records. See id. at ¶ 7-8,
13 Ex. C. Thus, the Court finds that Defendants are liable for
14 \$18,767.78 in unpaid contributions.

15 **C. Liquidated Damages**

16 Under the Trust Agreements, employers who fail to pay
17 contributions are liable for liquidated damages. See Hagan Decl.,
18 Ex. B at § 7C. Liquidated damages include 1.5% monthly interest
19 on unpaid contributions and \$150 per month for internal
20 administrative costs. Id. at § 7D, 7E. Under § 502(g)(2) of
21 ERISA, the Trust Funds are entitled to interest and liquidated
22 damages. See 29 U.S.C. § 1132(g)(2). Plaintiffs are entitled to
23 liquidated damages when: "(1) the fiduciary obtains a judgment in
24 favor of the plan, (2) unpaid contributions exist at the time of
25 suit, and (3) the plan provides for liquidated damages." Idaho
26 Plumbers and Pipefitters Health and Welfare Fund v. United
27 Mechanical Contractors, Inc., 875 F.2d 212, 215 (9th Cir. 1989).

1 In this case, Plaintiffs have satisfied all three parts of the
2 test: they are entitled to judgment, they have shown the existence
3 of unpaid contributions, and the plan provides for liquidated
4 damages. Thus, Plaintiffs are entitled to liquidated damages and
5 interest of \$10,069.71. See Sorensen Decl., ¶ 10, Ex. C.

6 **D. Attorneys' Fees and Costs**

7 The Trust Agreements contain a provision for recovery of
8 attorneys' fees and costs in the event an individual employer
9 defaults on contributions. See Hagan Decl., Ex. C, 11. In
10 addition, ERISA § 502(g)(2) authorizes Plaintiffs' recovery of
11 attorneys' fees and costs. See 29 U.S.C. § 1132(g)(2)(D). The
12 Court finds that Plaintiffs are entitled to attorneys' fees and
13 costs under the CBA. Plaintiffs are ordered to file supplemental
14 declarations indicating the amounts requested and the underlying
15 calculations within 30 days of this order.

16
17 **V. CONCLUSION**

18 For the reasons stated herein, the Court GRANTS Plaintiffs'
19 Motion for Summary Judgment and AWARDS Plaintiffs damages of
20 \$28,837.49, consisting of \$18,767.78 in unpaid contributions and
21 \$10,069.71 in interest and liquidated damages. The Court also
22 AWARDS Plaintiffs attorneys' fees and costs, subject to the
23 Court's review and approval of Plaintiffs' offer of proof.

24 IT IS SO ORDERED.

25
26 Dated: March 19, 2007



UNITED STATES DISTRICT JUDGE